

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VIRNETX INC., *et al.*,

Plaintiffs,

v.

APPLE INC.;

Defendant.

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CIVIL ACTION NO. 6:12-CV-00855-RWS

ORDER

Jury selection in this matter is scheduled to begin at **9:30 a.m.** on **October 26, 2020**, in Tyler, Texas, before the undersigned. Trial is scheduled to begin at **9:30 a.m.** the following day.

1. The parties have filed their initial proposed jury instructions. In light of the Court's pretrial orders and rulings during the pretrial conference, the parties are **ORDERED** to meet and confer and attempt to resolve any outstanding disputes regarding jury instructions. No later than **noon on Friday, October 23, 2020**, joint final and proposed jury instructions and verdict form should be filed electronically via ECF and should also be sent to the Court in word processing format to the following email address: Jacob_Vannette@txed.uscourts.gov.

2. Exhibit lists should be finalized and filed electronically via ECF no later than **5 p.m. on October 23, 2020**. An exhibit on a party's pre-admitted exhibit list does not become part of the trial record unless it is used at trial and the corresponding exhibit number is read into the record. The parties will be given an opportunity to read exhibit numbers into the record before or at the conclusion of each trial day.

3. Jury selection will consist of a morning session involving 18 persons and an afternoon session involving 18 persons. The afternoon session will begin at approximately **3 p.m.** The jury will consist of **eight (8)** persons. All members of the jury venire called for the trial will be subject to voir dire. Counsel will conduct voir dire with **thirty (30) minutes** per side per session.

4. After each session, any party having any challenge for cause shall raise its cause challenges with the Court. The Court will also address hardship issues after each session. After resolving the parties' cause challenges and any hardship issues with the afternoon panel, the Court will take a 10-minute recess for the parties to exercise their peremptory challenges on the entire panel. The parties will be allowed to exercise up to **three (3) peremptory challenges** per side. The challenges will be exercised simultaneously by the parties, *i.e.*, by the "blind strike" system. Jury selection is expected to take the entire day.

5. Trial will begin at **9:30 a.m. on October 27, 2020**. The Court will give preliminary instructions to the jury. The case will then be called for trial.

6. The parties have the option of providing jury notebooks. If provided, the jurors will have the notebooks with them during trial. An example juror notebook might contain (1) the patents-in-suit; (2) witness pages for each witness who will testify at trial, with a head and shoulders photo of the witness at the top of each page, name underneath, and ruled lines below for the jurors to take notes. Witness pages should not distinguish between Plaintiffs' and Defendant's witnesses, or otherwise identify the witnesses beyond proper names; (3) a three-hole-punched and lined notepad; and (4) a pen. The parties may include other potentially helpful materials, within reasonable bounds of volume, upon which the parties can agree. The parties are **ORDERED** to send one copy of the agreed juror notebook to Judge Schroeder's chambers in Texarkana, Texas,

by **5 p.m.** on **Friday, October 23, 2020**. The Court will let the parties know if modifications need to be made to the notebooks before the parties provide **ten (10) copies** of the notebooks to Judge Schroeder's chambers in Tyler, Texas, on **Tuesday, October 27, 2020**.

7. The parties will be permitted a maximum of **thirty (30) minutes** per side for opening statements.

8. The parties will be permitted a maximum of **ten (10) hours per side** for direct and cross-examination.

9. Each witness will be questioned on direct examination by only one attorney, and only one attorney will be responsible for cross-examination of that witness. Only the attorneys who are responsible for examining and cross-examining a witness will participate in making and responding to objections regarding that witness's testimony.

10. Proceedings will begin promptly at 9:30 a.m. and continue until approximately 4:30 p.m. each day.

11. The Court will be available for at least one half-hour before the beginning of trial each day to deal with evidentiary questions or other procedural matters. The Court will also be available at the end of the trial day to address any matters that need resolution at that time. If the parties are aware in advance of any such matter that needs to be addressed either before or after the court session, they should advise the law clerk and give notice to all other parties.

12. The parties are reminded to follow the General Order Regarding Courthouse Security Policies (General Order 18-06).

13. Any written dispute a party expects to raise with the Court before a trial day, including but not limited to disputes regarding exhibits and demonstratives, **SHALL** be submitted to the Court by **11 p.m.** the preceding evening. Any response shall be submitted by **7 a.m.** the

following morning. Submissions shall be made via filings on ECF or via email to the law clerk. The parties are required to meet and confer, although not in person, before submitting a dispute to the Court.

14. Prior to closing arguments, the Court will conduct a charge conference and review the parties' objections and proposals regarding jury instructions. Objections to the Court's jury charge must be made during that conference with a statement of the reasons for each objection. If a party objects to an aspect of the charge, a party must propose alternative charge language that would cure the objectionable aspect of the instruction.

15. Closing arguments will be limited to **thirty (30) minutes** per side. Plaintiff may reserve one-third of its time for rebuttal argument.

16. A written copy of the charge will be given to the jury during deliberations. During deliberations, the parties will be expected to remain near the courthouse and accessible by phone unless released by the Court. The parties may pack up their exhibits during deliberations but are expected to be able to provide additional copies of any exhibits or demonstratives presented at trial if requested by the jury during their deliberations. The parties are instructed to provide Judge Schroeder's courtroom deputy with a cell phone number at which they can be reached.

17. In the event of settlement, the parties shall promptly notify the Court via electronic filing or email.

So ORDERED and SIGNED this 21st day of October, 2020.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE